

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAREN ROSE DACUMOS,
Plaintiff,
v.
TOYOTA MOTOR CREDIT
CORPORATION, *et al.*,
Defendants.

Case No. C17-0964 RSM

ORDER GRANTING MOTIONS TO DISMISS

I. INTRODUCTION

This matter comes before the Court on Defendant Toyota Motor Credit Corporation’s (“TMCC”) Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), in which Defendant Patenaude & Felix, A.P.C. (“P&F”) has also joined. Dkts. #59 and #61. Defendant TMCC seeks dismissal of all claims against it, while Defendant P&F seeks to dismiss some of the claims against it. Plaintiff opposes the motions. Dkt. #65. Having reviewed the record before it, and neither party having requested oral argument on the motions, the Court now GRANTS Defendants’ motions for the reasons discussed herein.

II. BACKGROUND

TMCC and two former Defendants removed the instant action to this Court on June 26, 2017. Dkt. #1. Plaintiff initially alleged violations of the FCRA and damages arising from the continued credit reporting of a charged off amount of a car loan that she co-signed. *Id.* Plaintiff

1 also initially named Defendant TMCC as the creditor/furnisher and Defendants Equifax
2 Information Services LLC (“Equifax”) and Experian Information Solutions, Inc. (“Experian”) as
3 the credit reporting agencies. Dkt. #1-1 at ¶¶ 2.2-2.9.

4 After Defendant TMCC moved for judgment on the pleadings, which this Court granted,
5 Plaintiff dismissed Equifax and Experian and filed an Amended Complaint. Dkts. #33, #45, #48
6 and #52. In the Amended Complaint, Plaintiff continues to name TMCC as the creditor/furnisher
7 of the car loan at issue, and now names P&F as a Defendant. Dkt. #52 at ¶ 2.5. According to
8 the Amended Complaint, TMCC hired P&F to file a lawsuit in the Superior Court of King
9 County, Washington to collect an alleged unpaid vehicle loan account from Plaintiff. *Id.*
10

11 Plaintiff alleges the factual background to her claims as follows:
12

- 13 4.1 Plaintiff (hereinafter “Ms. Dacumos”) co-signed a vehicle loan
14 with Defendant TOYOTA MOTOR CREDIT CORPORATION
15 (hereinafter “TMCC”) for Melanthon Ibañez.
- 16 4.2 Thereafter, Mr. Ibañez defaulted on the loan.
- 17 4.3 TMCC sued Mr. Ibañez and Ms. Dacumos in *TMCC Motor*
18 *Credit Corporation v. Melanthon Ibañez and Carenrose*
19 *Dacumos*, King County Superior Court Case No. 15-2-13622-4
20 KNT.
- 21 4.4 TMCC and its lawyers, P&F, violated Ms. Dacumos’s rights in
22 the prosecution of 15-2-13622-4.
- 23 4.5 Ms. Dacumos brought a separate action against TMCC and P&F,
24 entitled *Carenrose Dacumos v. Patenaude & Felix, A.P.C. and*
25 *TMCC Motor Credit Corporation*, King County Cause No. 15-2-
26 26288-2 SEA.
27
28 ...
29
30 4.7 Ms. Dacumos, TMCC, and P&F simultaneously resolved *all*
31 *claims and both lawsuits* through a global release and settlement
32 agreement (“settlement agreement”), attached hereto as **Exhibit**
33 **A**.

1 4.8 TMCC's counsel drafted the release and settlement agreement.

2 ...

3 4.10 Ms. Dacumos agreed to dismiss her lawsuit against TMCC and
4 P&F in exchange for the following consideration:

- 5 A. TMCC dismissed its lawsuit, 15-2-13622-4 KNT,
6 against Ms. Dacumos, *with prejudice*. *See, Ex. A*, p.
1, ¶ 2(a).
- 7 B. P&F paid Ms. Dacumos \$5,000.00 for the damages
8 P&F caused through its statutory violations. *See, Ex.*
9 A, p. 1, ¶ 1.
- 10 C. Ms. Dacumos filed a motion for prevailing party
11 costs and attorney's fees in her case against TMCC
12 and P&F, 15-2-26288-2 SEA. *See, Ex. A*, p. 1, ¶ 3.
- 13 D. TMCC and P&F agreed to never again attempt to
14 collect from Ms. Dacumos the debt at the heart of
15 TMCC/P&F's debt collection lawsuit filed against
16 Mr. Ibañez and Ms. Dacumos. *See, Ex. A*, p. 1, ¶
17 2(b).

18 4.11 TMCC and P&F were free to pursue Mr. Ibañez for the debt.

19 4.12 However, as to Ms. Dacumos: "**No further collection action**
20 **shall be pursued, and no further lawsuit shall be brought,**
21 **against Caren Dacumos by Toyota or Patenaude & Felix on**
22 **the debt that is the subject of this lawsuit.**" *See, Ex. A*, p. 1, ¶
23 2(a). **Emphasis added.**

24 4.13 On June 29, 2016, after the parties vigorously litigated Ms.
25 Dacumos's claims against TMCC and P&F, and after the parties
26 executed the release and settlement agreement, the King County
27 Superior Court entered an Order of Dismissal With Prejudice of
28 all TMCC's claims against Ms. Dacumos. *See*, 15-2-13622-4
KNT.

25 4.14 This Order of Dismissal With Prejudice operates as a judgment
26 on the merits of both King County cases.

27 4.15 Ms. Dacumos reasonably understood the language of the mutual
28 release and settlement agreement that P&F drafted to mean that
TMCC was discharging Ms. Dacumos's liability for the

1 underlying account, and P&F would pay Ms. Dacumos damages,
2 costs, and attorney's fees, in exchange for Ms. Dacumos
3 dismissing her claims against TMCC and P&F.

4 4.16 Ms. Dacumos reasonably believed that the language of the
5 mutual release and settlement agreement, coupled with the two
6 dismissals *with prejudice*, discharged Ms. Dacumos's liability
7 for the TMCC account.

8 . . .
9

10 4.22 Despite its agreement that: "**No further collection action shall**
11 **be pursued, and no further lawsuit shall be brought, against**
12 **Caren Dacumos by Toyota or Patenaude & Felix on the debt**
13 **that is the subject of this lawsuit,**" TMCC continued to report
14 to the credit reporting agencies that Ms. Dacumos owes
15 \$13,593.00, the exact amount "...that is the subject of this
16 lawsuit."

17 4.23 TMCC asserts that it is simply reporting a debt that is "on its
18 books."
19 . . .
20

21 4.38 Plaintiff therefore alleges that TMCC's credit reporting of "...**the**
22 **debt that is the subject of this lawsuit**" as having a balance of
23 \$13,593.00, is an attempt to force Ms. Dacumos to pay TMCC
24 \$13,593.00.

25 4.39 TMCC is reporting that Ms. Dacumos owes TMCC \$13,593.00,
26 as a means of collecting "...**the debt that is the subject of this**
27 **lawsuit**" from Ms. Dacumos.

28 4.40 Despite the parties' agreement that "**No further collection**
29 **action shall be pursued, and no further lawsuit shall be**
30 **brought, against Caren Dacumos by Toyota or Patenaude &**
31 **Felix on the debt that is the subject of this lawsuit,**" TMCC
32 refuses to update what it reports to the credit reporting agencies
33 to reflect that Ms. Dacumos owes \$0.00 to TMCC.

34 4.41 As a result, in July 2016, TMCC reported the status of TMCC
35 account number 7040***** as a Charge Off and that
36 \$13,593 was past due.

37 4.42 TMCC's reporting is erroneous because TMCC dismissed its
38 debt collection lawsuit against Ms. Dacumos *with prejudice*,

1 which operated as an adjudication on the merits of TMCC's
2 claim, and resolved Ms. Dacumos's liability for the underlying
3 debt in her favor.

4 4.43 TMCC's reporting is erroneous because the parties entered a
5 written release and settlement agreement wherein TMCC
6 discharged Ms. Dacumos's liability for "...**the debt that is the**
7 **subject of this lawsuit**" as consideration in exchange for Ms.
8 Dacumos dismissing her lawsuit against TMCC and P&F.

9
10 4.44 TMCC's reporting is erroneous because Ms. Dacumos's liability
11 on the TMCC account was fully adjudicated on the merits where
12 the parties vigorously litigated the case.

13 ...

14 4.76 Yet, despite the parties' release and settlement agreement, to this
15 day TMCC insists that Ms. Dacumos owes TMCC \$13,593.

16 ...

17 Dkt. #52 at ¶¶ 4.1-4.76 (emphasis in original).

18 Plaintiff now brings claims against Defendant TMCC for an alleged violation of the
19 FCRA (Claim 1), breach of contract (Claim 3), and an alleged violation of Washington's
20 Consumer Protection Act ("CPA") (Claim 4). Dkt. #52 at ¶¶ 5.1-5.20, 7.1-7.45 and 8.1-8.26.
21 TMCC moves for the dismissal of all of these claims with prejudice. Dkt. #59. Plaintiff brings
22 claims against Defendant P&F for an alleged violation of the FCRA (Claim 2), breach of contract
23 (Claim 3) and an alleged violation of the CPA (Claim 4). Dkt. #52 at ¶¶ 6.1-6.11, 7.1-7.45 and
24 8.1-8.26. P&F moves for the dismissal of Claims 3 and 4 against it. Dkts. #61 and #67 at 2.

25 III. DISCUSSION

26 A. Standard of Review

27 On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure
28 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most
favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir.

1 1996). However, the court is not required to accept as true a “legal conclusion couched as a
2 factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
3 *Twombly*, 550 U.S. 544, 555 (2007)). The Complaint “must contain sufficient factual matter,
4 accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This
5 requirement is met when the plaintiff “pleads factual content that allows the court to draw the
6 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Absent facial
7 plausibility, Plaintiffs’ claims must be dismissed. *Twombly*, 550 U.S. at 570.

8 Though the Court limits its Rule 12(b)(6) review to allegations of material fact set forth
9 in the complaint, the Court may consider documents for which it has taken judicial notice. *See*
10 F.R.E. 201; *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). Here, the Court has taken
11 judicial notice of, and considers herein, Exhibit A-C attached to Defendant TMCC’s Request for
12 Judicial Notice. *See* Dkt. #60. The Court agrees that judicial notice is appropriate because the
13 documents presented are all matters of public record, having been filed in the King County
14 Superior Court. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). Further the
15 Court considers Exhibit A to the Amended Complaint. The Court will not consider any other
16 document outside of the Amended Complaint.

17 **B. Plaintiff’s Amended Complaint**

18 1. *Request to Convert to Summary Judgment*

19 As an initial matter, the Court addresses Plaintiff’s request that this Court convert the
20 instant motion into one for summary judgment and then continue the motion while Plaintiff
21 completes discovery. Dkt. #65 at 13-15. The Court denies that request for several reasons. First,
22 the Court need not consider additional materials outside of the Complaint or beyond those
23 documents of which it takes judicial notice to resolve the issues raised on these motions. Second,
24

1 a request for additional time to conduct discovery requires the non-moving party to “show[] by
2 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its
3 opposition. . . .” Fed. R. Civ. P. 56(d). Plaintiff has failed to submit such a declaration or
4 affidavit. Third, Plaintiff asserts in her own opposition to these motions that the Court need not
5 go beyond the four corners of the settlement agreement to resolve the issues presented. Dkt. #65
6 at 11. Therefore, the Court declines to convert these motions to dismiss to those for summary
7 judgment.

8

9 2. *Settlement Agreement*

10 The Court now turns to the claims made by Plaintiff in her Amended Complaint. In her
11 First Cause of Action, Plaintiff alleges that TMCC’s continued reporting of a \$13,593 balance
12 owed violates FCRA because it is inaccurate. Dkt. #52 at ¶¶ 5.1-5.20. Plaintiff alleges that the
13 amount is inaccurate because a global settlement agreement resolved any claims for liability
14 against her and therefore she no longer owes the debt, so TMCC should be reporting a \$0 balance.
15 *Id.* Plaintiff’s Third Cause of Action for breach of contract rests on essentially the same
16 allegations. *Id.* at ¶¶ 7.1-7.45. Defendant TMCC moves to dismiss these claims, arguing that
17 Plaintiff misunderstands the effect of the settlement agreement and that the Court has previously
18 dismissed a portion of the FCRA claim with prejudice. Dkt. #59 at 3-8. Thus, the Court first
19 examines the settlement agreement on which these claims rely.

20 “*A breach of contract is actionable only if the contract imposes a duty, the duty is breached, and the breach proximately causes damage to the claimant.*” *Nw. Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 78 Wash. App. 707, 712 (1995). Washington courts follow the
21 “objective manifestation theory” in determining the meaning of a contract and the duties it
22 imposes, and therefore focus on the reasonable meaning of the contract language to determine
23

1 the parties' intent, rather than on unexpressed subjective intentions. *Hearst Commc'nns, Inc. v.*
2 *Seattle Times Co.*, 154 Wn.2d 493, 503 (2005); *Grey v. Leach*, 158 Wash. App. 837, 850 (2010).

3 Plaintiff argues that the plain meaning of the settlement agreement involving the parties to this
4 case unambiguously resolved the claim that Toyota is now credit reporting. Dkt. #65 at 8.

5 Plaintiff further argues that the agreement evidences an intention to fully resolve all claims and
6 leaves TMCC with no right to claim \$13,593 from Ms. Dacumos. *Id.* Thus, Plaintiff asserts that
7 no reasonable interpretation of the settlement agreement would permit TMCC to continue
8 collecting the debt via credit reporting it as an active, unpaid obligation. Dkt. #65 at 8-9. The
9 Court disagrees with Plaintiff.

10 First, the Settlement Agreement was between Plaintiff and P&F only, and not TMCC.
11 Dkt. #52, Ex. A at 1. Second, while P&F agreed that TMCC would pursue no further collection
12 action or lawsuit against Plaintiff, this was consideration P&F offered in exchange for a mutual
13 release and dismissal of Plaintiff's lawsuit against P&F. *Id.*, Ex. A at ¶ 2. Thus, there is no
14 contract with TMCC that could be breached. *FDIC v. Uribe*, 171 Wn. App. 683, 697 (2012) ("A
15 contract is formed when there is an offer, an acceptance, and consideration.").

16 Plaintiff argues that the mutual release provision of the settlement agreement makes clear
17 that TMCC was discharging any liability for the loan. Dkt. #65 at 8-9. Plaintiff asserts:
18

19 The plain meaning of the "Mutual Release" discharged Plaintiff's liability for
20 the \$13,593 Toyota account. Plaintiff's liability to Toyota is zero. Therefore,
21 to be "accurate," Toyota must report that Plaintiff owes Toyota "\$0.00."

22 Dkt. #65 at 9.

23 Plaintiff misinterprets that provision. The mutual release states:

24 4. Mutual Release: All Parties hereby mutually release and forever discharge
25 each other, and each and all of their directors, officers, members, partners,
26 employees, servants, clients, attorneys, insurers, agents, and representatives,
27 whether past and/or present, from any and all claims, cross-claims,

1 counterclaims, demands, actions, causes of actions, debts, liabilities, rights,
2 contracts, obligations, duties, damages, costs, requests for replacement,
3 expenses, attorney's fees, expert fees, appeals, or losses of every kind or
4 nature whatsoever that he or she possesses, whether at this time known or
5 unknown, pied or not pied, suspected or unsuspected, anticipated or
6 unanticipated, direct or indirect, fixed or contingent, or which may presently
exist and may hereafter become known, in law or in equity, in the nature of
an administrative proceeding or otherwise, for or by reason of any event,
transaction, matter, or cause with respect to, in connection with, arising out
of, or relating to the Lawsuit.

7 Dkt. #52, Ex. A at ¶ 4. This provision plainly constitutes an agreement to release *each other's*
8 clients. Plaintiff agreed to release all claims against P&F's clients (which may include TMCC),
9 not vice versa. Because the only promisors in the Mutual Release are P&F and Plaintiff, and
10 because TMCC is not a party or signatory to the Settlement Agreement, the Settlement
11 Agreement does not operate to discharge Plaintiff's debt balance.
12

13 Likewise, Plaintiff's breach of contract claim fails because it is based on Plaintiff's flawed
14 assertion that the Settlement Agreement operated to discharge the \$13,593 loan balance. As
15 already explained, the Settlement Agreement was not a mutual release of claims between Plaintiff
16 and TMCC as alleged. Moreover, Plaintiff did not "dismiss[] her lawsuit against TMCC" as
17 "consideration" for TMCC's discharge of her debt as alleged. *See* Dkt. #52 at ¶ 4.43. As
18 evidenced by the court orders in Plaintiff's state court action, the King County Superior Court
19 granted TMCC's Motion for Summary Judgment and dismissed TMCC with prejudice before
20 Plaintiff entered into the Settlement Agreement with P&F. Dkt. #60, Exs. A, B and C.
21 Accordingly, the stipulated dismissal of Plaintiff's state court action dismissed P&F only, as
22 TMCC was no longer a party to that action. *Id.*
23

24 Plaintiff also contends that TMCC breached Paragraph 2.b. of the Agreement by reporting
25 Plaintiff's loan balance as \$13,593.00 instead of \$0. *See* FAC ¶ 4.22. That paragraph does not
26 waive or discharge the \$13,593.00 loan balance as to Plaintiff. Further, that paragraph is silent
27 about Plaintiff's loan balance.
28

1 about credit reporting. Dkt. #52, Ex. A at ¶ 2.b. Instead, that paragraph simply states that both
2 P&F and TMCC will cease any collection efforts against Plaintiff and will not file any lawsuits
3 against her for that debt. Defendants have complied with that provision. Neither has continued
4 collection efforts and neither has filed a further lawsuit pertaining to that debt.

5 Finally, to the extent that Plaintiff attempts to reassert her theory that the dismissal of
6 TMCC's collection action discharged her liability for the debt, this Court has already rejected
7 that theory and dismissed any claim based on that theory with prejudice. Dkt. #33. Specifically,
8 this Court has already determined that the state court order of dismissal does not preclude TMCC
9 from reporting a charged off debt, and does not require it to report a \$0 balance. Dkt. #33 at 6-
10 9. For all of these reasons, Plaintiff's First and Third Causes of Action against TMCC and Third
11 Cause of Action against P&F must be dismissed.
12

13 3. *CPA Claim*

14 Defendants next move to dismiss Plaintiff's CPA claim. Dkts. #59 at 8-10 and #61.
15 Plaintiff has failed to respond to that portion of the motions. *See* Dkt. #65. Pursuant to this
16 Court's Local Civil Rules, “[e]xcept for motions for summary judgment, if a party fails to file
17 papers in opposition to a motion, such failure may be considered by the court as an admission
18 that the motion has merit.” LCR 7(b)(2). The Court considers Plaintiff's failure to respond to
19 be such an admission in this case. Moreover, Plaintiff's CPA claim is based on the allegation
20 that Defendants' breach of contract constitutes a violation of the CPA. *See* Dkt. #52 at ¶¶ 8.1-
21 8.26. The Court has rejected Plaintiff's breach of contract claim as discussed above. The Court
22 also agrees, for the reasons set forth by TMCC in its motion, that Plaintiff fails to allege facts
23 sufficient to support the elements of a CPA claim, and particularly the assertion that Defendants
24

1 engaged in unfair or deceptive practices affecting the public interest. See Dkt. #59 at 9-10.

2 Accordingly, Plaintiff's Fourth Cause of Action against TMCC and P&F must be dismissed.

3 **C. Leave to Amend**

4 Ordinarily, leave to amend a complaint should be freely given following an order of
5 dismissal, "unless it is absolutely clear that the deficiencies of the complaint could not be cured
6 by amendment." *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987); *see also DeSoto v. Yellow*
7 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) ("A district court does not err in denying
8 leave to amend where the amendment would be futile." (citing *Reddy v. Litton Indus., Inc.*, 912
9 F.2d 291, 296 (9th Cir. 1990)). In this case, the Court concludes that granting leave to amend
10 the dismissed claims would be futile. The Court can conceive of no possible cure for the
11 deficiencies in Plaintiff's Amended Complaint as to those claims, particularly given the invalidity
12 of Plaintiff's arguments as discussed above and the fact that Plaintiff has previously been granted
13 leave to amend her claims. Accordingly, leave to amend Plaintiff's First, Third and Fourth
14 Causes of Action will not be granted.
15

16 **IV. CONCLUSION**

17 Having reviewed Defendants' motions to dismiss, Plaintiff's opposition thereto and the
18 replies in support thereof, the declarations and exhibits attached thereto, and the remainder of the
19 record, the Court hereby ORDERS:

- 20 1) Defendant TMCC's Motion to Dismiss (Dkt. #59) is GRANTED without leave to
21 amend. Plaintiff's First, Third and Fourth Causes of Action against it are
22 DISMISSED with prejudice.
23
24 2) Toyota Motor Credit Corporation shall be DISMISSED as a Defendant to this action.
25
26

1 3) Defendant P&F's joinder in TMCC's Motion to Dismiss (Dkt. #61) is GRANTED.

2 Plaintiff's Third and Fourth Causes of Action against it are DISMISSED without
3 leave to amend and with prejudice.

4 4) Plaintiff's Second Cause of Action against P&F was not the subject of these motions
5 and remains pending. This matter shall proceed on that claim only.

6 DATED this 3rd day of May 2018.

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9
10 RICARDO S. MARTINEZ
11 CHIEF UNITED STATES DISTRICT JUDGE
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